REMARKS/ARGUMENTS

The applicant requests reconsideration of the present application in view of the above changes to the claims and the following remarks, which are responsive to the Office Action mailed September 27, 2005.

I. Status of Claims

In the Office Action, Claims 1-40 were noted as pending in the application. Of those, Claims 3, 5-8, 12-15, 17-19, 22-23, 25-28 and 31-39 were noted as withdrawn from consideration. The remaining Claims 1, 2, 4, 9-11, 16, 20, 21, 24, 29, 30 and 40 were rejected. As a result of this response, Claims 1, 3-9, 11-16 and 18-40 remain pending in the application, Claims 2, 10, and 17 have been canceled, and Independent Claims 1, 9, 16, 24 and 40 are currently amended in order to further clarify the novel aspects of the invention.

II. Claim Rejections – 35 U.S.C. §103

a. Rejection of Claims 1, 2, 4, 9-11, 16, 24, 29 and 40

The Examiner rejected Claims 1, 2, 4, 9-11, 16, 24, 29 and 40 under 35 U.S.C. §103(a) as unpatentable over U.S. Patent No. 6,085,170 to Tsukuda (hereinafter "*Tsukuda*") in view of an article in Traffic World Magazine entitled "Core Competency" written by David Biederman (hereinafter "*David*"). (Office Action, pg. 2, para. 6). As noted above, of these, Claims 2 and 10 have been canceled. For at least the reasons set forth below, Applicant submits that the remaining claims 1, 4, 9, 11, 16, 24, 29 and 40 are patentable over *Tsukuda* in view of *David*, and respectfully requests that the rejection be withdrawn.

In particular, reference is made to Independent Claim 1, which is reproduced below, as amended, for the Examiner's convenience.

> 1. (Currently Amended) A method of obtaining desired delivery times from intended recipients of items, comprising:
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> providing each recipient with a plurality of time windows ~~that overlap with one another in time~~ from which the recipient may choose a time for delivery of an item, **wherein said plurality includes at least two sequential time windows and at least one overlapping time window that overlaps a portion of each of the sequential time windows**; and
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> receiving choices made by recipients from the plurality of ~~overlapping~~ time windows.

Applicant respectfully asserts that neither of the cited references, alone or in combination, teach or suggest "providing each recipient with a plurality of time windows from which the recipient may choose a time for delivery of an item, *wherein said plurality includes at least two sequential time windows and at least one overlapping time window that overlaps a portion of each of the sequential time windows*." (Applicant's Claim 1, *emphasis added*).

Applicant respectfully asserts that the Examiner is incorrect in his characterization of "overlapping time windows" on page two, paragraph three of the Office Action. Assuming, as suggested by the Examiner, that the time windows are "the days of the week or weekend" and that one time window is, for example, Monday and another time window is Tuesday (i.e., representing "sequential time windows"), the overlapping time window (i.e., the time window that "comprises a portion of two or more sequential time windows" – Claim 1) would be a period of time that includes time on Monday and on Tuesday (e.g., a period from 2:00 PM on Monday to 11:00 AM on Tuesday). A series of "time periods within a given day," (Office Action, pg. 2, para. 3) such as Monday, would not constitute overlapping time windows, as suggested by the Examiner.

As described in the following excerpts from the Applicant's Specification, the use of time windows that include a portion of two or more sequential time windows, in lieu of using sequential time windows alone, is beneficial for a number of reasons.

> Many times, a consumer is not available to take a delivery at a specific time within the available time window. For example, if a consumer is not available to take a delivery at 7:00 a.m., but would be available at 8:00 a.m. or 9:00 through 11:00 a.m., [assuming the time windows offered were 7:00 to 9:00 a.m., 9:00 to

> 11:00 a.m., and 11:00 a.m. to 1:00 p.m.], the consumer must wait until the 9:00 to 11:00 a.m. window to take delivery under conventional systems, which may not be as convenient as taking delivery at 8:00 a.m. Thus, if a consumer is unavailable to take a delivery at any specific time within a time window, it is not possible for the consumer to take delivery at any other time within that window. (Specification, pg. 2 lns. 4-11).
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> Figure 6 also demonstrates one of the advantages of using the overlapping delivery windows model. The term Stops Per On Road Hour (SPORH) represents the number of times a driver stops in a given hour to deliver items. The current SPORH through the grocery delivery industry is less than 2. By employing the method and system of the present invention, however, the SPORH increases significantly to between a range of 4 and 5 [primarily because of the increased flexibility provided to the consumer, which results in denser choices]. By increasing the number of SPORH in this manner the number of drivers required to achieve the same number of deliveries in a given amount of time decreases significantly. (Specification, pg. 10, lns. 9-16).
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> The method and system according to the present invention provides a number of advantages over the prior art including providing more delivery times during the optimum part of the day – 5 p.m. through 9 p.m. and 8 a.m. through 12 p.m. –, providing more flexibility to consumers in choosing delivery times, providing more efficiency in executing the deliveries to the consumers and providing operations with more flexibility with staffing and scheduling of drivers. The present invention thereby reduces labor and delivery costs to the business and the consumer, increases the number of deliveries available and provides the consumer with better service. (Specification, pg. 13, lns. 1-8).

Applicant further asserts that neither *Tsukuda* nor *David* teach or suggest providing a plurality of time windows, wherein the plurality includes at least two sequential time windows and at least one overlapping time window that overlaps a portion of each of the sequential time windows. *Tsukuda* discloses a "delivery managing system for managing delivery of goods from a distribution center through an agent to a receiver." (*Tsukuda*, Abstract). *Tsukuda* does not provide any other description of the delivery time other than stating that it is a "date and time" for delivery. *Tsukuda* does not disclose delivery times of any particular duration or relation (i.e., how the delivery times relate to one another). *Tsukuda* does not disclose the use of a time window that includes a portion of two or more sequential time windows.

David similarly does not disclose the use of a time window including a portion of two or more sequential time windows. In fact, *David* specifically recognizes, but does not solve, a problem that is addressed by the present invention. In general, *David* discusses online retailers that desire to keep fulfillment operations in-house and, therefore, are scrambling to expand their own facilities (i.e., distribution and warehousing capabilities) to avoid e-commerce backlogs. With respect to Peapod, Inc., the article discusses "routing challenges" posed by the online grocery environment "that are different than the logistics [John Caltagirone, Peapod's logistics and operations chief] is used to." Specifically, the article states:

> For example, customers select delivery times within two-hour windows. The challenge is getting enough density on each route and time slot. 'If we are in the neighborhood at 7 a.m., we don't want to come back at 3 p.m. for someone else.' [Caltagirone] said. 'The marketing challenge is to entice others to that window. It is different than routing where you have set times from store to store.' (*David*, pg. 2).

While *David* does disclose enabling the customers to "select delivery times within two-hour windows," *David* does not teach or suggest providing each customer with a plurality of time windows including at least two sequential time windows and an overlapping time window that overlaps a portion of each of the sequential time windows. Instead, *David* outlines a recognized problem in the art of "getting enough density on each route and time slot" and of enticing customers to particular time windows, yet does not provide a solution to this problem. The present invention provides this solution through the use of time windows that include a portion of two or more offered sequential time windows.

For at least these reasons, Applicant respectfully asserts that Independent Claim 1 is patentable over *Tsukuda*, in view of *David*. Based on the foregoing, Applicant respectfully requests that the rejection of Independent Claim 1 under 35 U.S.C. §103(a) be withdrawn.

Claim 4 depends from Independent Claim 1 and includes all of the limitations of that Claim plus additional limitations that further distinguish the art applied in the rejection. Thus, for at least the reasons set forth above with respect to Independent Claim 1, it is submitted that dependent Claim 4 is likewise patentable over *Tsukuda* in view of *David*. Applicant respectfully

requests, therefore, that the rejection of dependent Claim 4 under 35 U.S.C. §103(a) be withdrawn.

Reference is now made to Independent Claim 9, which is reproduced below, as amended, for the Examiner's convenience.

> 9. (Currently Amended) A method of obtaining desired delivery times from intended recipients of items, comprising:
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> **identifying** ~~**creating**~~ a plurality of time windows ~~**that overlap with one another in time**~~;
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> applying predetermined parameters to said plurality of time windows to identify a subset of time windows of said plurality to offer to recipients as available times for delivery, **wherein the subset of time windows includes at least two sequential time windows and at least one overlapping time window that overlaps a portion of each of the sequential time windows**;
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> providing each recipient with said subset of time windows from which the recipient may choose a time for delivery of an item; and
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> receiving choices made by recipients from said subset of said plurality of ~~**overlapping**~~ time windows.

For reasons similar to those discussed above with respect to Independent Claim 1, Applicant respectfully asserts that neither of the cited references, alone or in combination, teach or suggest identifying a subset of time windows to offer to recipients as available times for delivery, "wherein the subset of time windows includes at least two sequential time windows and at least one overlapping time window that overlaps a portion of each of the sequential time windows." (Applicant's Claim 9).

For at least this reason, Applicant respectfully asserts that Independent Claim 9 is patentable over *Tsukuda*, in view of *David*. Based on the foregoing, Applicant respectfully requests that the rejection of Independent Claim 9 under 35 U.S.C. §103(a) be withdrawn.

Claim 11 depends from Independent Claim 9 and includes all of the limitations of that Claim plus additional limitations that further distinguish the art applied in the rejection. Thus, for at least the reasons set forth above with respect to Independent Claim 9, it is submitted that dependent Claim 11 is likewise patentable over *Tsukuda* in view of *David*. Applicant